IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION No. 955 of 1997

Raja Mahendra Girji & ors. .. Petitioners

versus

Ramchandra Shivram Pednekar .. Respondent

...

Mr.S.G. Page for the petitioners.

Mr.S.B. Deshmukh i/b A.V. Anturkar for the respondent.

CORAM : B.H. MARLLAPALLE,J

DATED : 16th & 17th August 2005.

ORAL JUDGEMENT:

1. This Revision Application filed under section 115 of the Code of Civil Procedure takes exception to the decree passed by the learned 7th

Joint Civil Judge, Jr. Division, Pune on 13th April 1997 thereby partly decreeing Regular Civil Suit no. 2751 of 1989. The said suit was filed u/s.6 of the Specific Relief Act 1963 and the present appellants were impleaded as defendants and ordered to vacate peaceful possession of the verandah or suit room described in paragraph no.1-A of the plaint within one month of the date of the order.

2. The respondent plaintiff had claimed that he was employed by Shri P.N. Rabade who was Manager of the defendant no.1 trust for upkeep of its property on a monthly salary of Rs.900/-. In addition to the salary payment, as per the plaintiff he was allowed to use and occupy the three rooms by Shri Rabade with effect from 13th March 1980. The said three rooms were described as the 'suit property'.

(a) One room admeasuring 22' x 8' and bounded by

On the East : The premises in possession of Shri Kapale;

On the West : The room in possession of tenant Borgaonkar in the said property.

On theSouth : the room in possession of plaintiff

On the North: Open space.

(b) One room admeasuring 8’ x 8’ bounded by -

On the East : the premises in occupation of Shri Kapale;

On the West : the room in possession of the plaintiff;

On the South : Chawl of Mr.Desai, and

On the North : The premises in possession of the plaintiff.

(c) One room admeasuring 22’ x 8’ bounded as under:

On the East : the room in possession of plaintiff

On the West : the premises in occupation of tenant Borgaonkar.

On the South : Chawl of Mr.Desai; and

On the North : Open space.

3. Shri Rabade died on or about 20th August 1987 and defendant no.2 came to be appointed as the Manager of the defendant no.1 trust. On 10th November 1989, when the plaintiff approached the defendant no.2 and asked for payment of salary from the period September 1987 to 31st October 1989, the

defendant no.2 threatened the plaintiff of eviction from the suit rooms. The plaintiff issued a notice to the defendants through his Advocate on 19.11.1989. In retaliation, the defendant no.2 threw away all the articles and belongings of the plaintiff lying in the rooms described in paragraph no.1-A and 1-B on 26.11.1989 and took forcible possession of the said rooms. He also alleged that the defendants replied the notice dated 19.11.1989 through their Advocate on 4.12.1989 stating that his service was terminated and he was called upon to vacate the premises described in paragraph no.1-C within four days from the receipt of the reply. The plaintiff therefore claimed that he was in lawful possession of the two rooms described in paragraph no.1(A) and 1(B) and he was entitled for restoration of his possession over the said rooms u/s.6 of the Specific Relief Act.

4. The petitioner defendants filed their written statement and contested the claim. While they admitted that the plaintiff was in the employment of defendant no.1 trust, he was put in possession of the room described in paragraph no.1(C) of the plaint and the other two rooms were

never in his possession. By the notice dated 4th December 1989, the employment of the plaintiff was terminated and he was called upon to vacate the room in his possession and described as 1(C) in the plaint and as he did not do so, Civil Suit no.954 of 1991 was filed in the Small Causes Court, Pune for seeking the possession of the suit room. The defendants also denied about the alleged forcible dispossession that had taken place on 26th November 1989 in respect of rooms described in 1(A) and 1(B). The defendant no.2 also filed a written statement and pointed out that at no point of time, the plaintiff had any concern with the rooms described in 1(A) and 1(B). It was further stated that the plaintiff himself had filed Regular Civil Suit no.1609 of 1989 in the Small Causes Court at Pune on or about 4th December 1989 and prayed for permanent injunction against the defendants in respect of all the three rooms described in the suit premises and such an injunction could not have been sought unless the plaintiff was himself in possession on the date when the suit was filed i.e. 4.12.1989. It was also denied that the plaintiff had sent any legal notice on 19th November 1989. However, it was admitted that on 27th November 1989, a notice was

received and the same was replied. An objection was also taken to the maintainability of the suit u/s.6 of the Specific Relief Act on the ground that the single room that was in his possession was allotted to him on account of his being an employee of the defendant no.1 trust without any consideration in terms of rent etc.

5. There is no dispute that Civil Suit no.954 of 1991 filed by the present petitioners has been decreed against the respondent by the learned 6th Addl. Judge, Small Causes Court at Pune on 25.8.1994 and the respondent was called upon to deliver possession of the suit premises to the plaintiffs within three months. The said decree was challenged in Civil Appeal No. 844 of 1994 and the appeal came to be dismissed by the learned 2nd Addl. District Judge at Pune on 4th March 1997. This decree was in respect of the room described as 1-C in the plaint in Suit no. 2571 of 1989. In addition, the present plaintiff also filed Regular Civil Suit no. 1609 of 1989 against the present appellants on or about 4th December 1989 and it came to be dismissed for non prosecution on 11th September 1990. Mr. Page, the learned counsel for

the petitioners has placed on record certified true copy of the said plaint in RCS 1609 of 1989. It is therefore necessary to examine whether the plaintiff was forcibly dispossessed on 26th November 1989 from the suit rooms described as 1(A) and 1(B). The averments made in RCS 1609/89 indicate on 26.11.89, he was in possession of two rooms and he was likelt to be forcibly evicted from the room described as I-(C) in the plaint and there is no averment that he was sought to be dispossessed from the other two rooms i.e. 1A and 1B. While in the witness box, the plaintiff in his oral depositions reiterated his allegations that he was forcibly evicted but he could not mention the exact date of such eviction or dispossession. One witness by name Mr. Hiraman Keru Mayekar was examined by the plaintiff in support of his case and he stated that in his presence on 26.11.1989, the plaintiffs belongings were removed from one out of the two rooms in his possession. This witness was admittedly resident of Panchgani and admitted that the belongings as thrown out allegedly could not be described by him nor could he mention the exact date of this incidence, as stated in the cross examination. This witness admitted that he was the brother-in-law of the

plaintiff. This evidence does not inspire confidence. Thus, there is no reliable evidence in support of the case made out by the plaintiff that he was forcibly dispossessed from the two rooms described as 1A and 1B or any one of them on 26.11.89. In his suit filed before the Small causes Court, the said pleadings could have been set out when both the suits were filed within a gap of about four days.

6. Secondly, the defendants had resorted to legal process for seeking the possession of the premises which were in possession of the plaintiff by filing suit no. 954 of 1991 in the Small Causes Court. The suit property was specifically described and it excluded the rooms described as 1A and 1B in RCS No.2571 of 1989.

7. The pleading of the plaintiff as set out in the suit were not also clear. The suit premises were described as three different rooms, suit has been decreed in the alternate i.e. for verandah or room described in 1A of the plaint. The oral depositions of the plaintiff before the trial court do show that he had set up a case of forceable

dispossession of three rooms as well as two different verandahs. This is one more ground why the impugned decree is unsustainable.

8. The decree passed in Civil Suit No. 954/1991 has been confirmed by the lower Appellate Court by dismissing the Civil Appeal No. 844/1994 and the learned IInd Additional District Judge at Pune recorded his conclusions that the present petitioners succeeded in proving that the suit premises i.e. room described as 1(c) were let out to the present respondent/plaintiff for use as residence by reason of his being in service or employment of the petitioners and that his services are terminated, he was not entitled to continue the possession of the suit premises and that the landlords were entitled to get the possession of the suit premises. On the face of these findings, it is clear that the plaintiff was in possession of the room described in 1(C) solely on account of his being in employment of the defendant no.1 - Trust. His plea that he was in possession of the other two rooms described in 1(A) and 1(B), no reliable evidence was placed before the trial court as has been noted hereinabove and, therefore, the findings

recorded by the trial court that the suit premises were let out, and that the plaintiff was in lawful or settled possession of the suit rooms 1(A) and 1(B) are unsustainable. Consequently, the findings on issue no.2 viz. the defendant no.2 illegally dispossessed the plaintiff from the suit premises 1(A) and 1(B) could not have been answered in the affirmative.

9. In the circumstances, this revision petition succeeds and the same is hereby allowed. The impugned judgement and decree dated 30th April 1997 passed in Regular Civil Suit no. 2571/1989 by the learned VIIth Joint Civil Judge, Junior Division at Pune under section 6 of the Specific Relief Act is hereby quashed and set aside. The said suit hereby stands dismissed.

10. Rule is made absolute in the above terms but without any costs.

B.H. MARLAPALLE, J